

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|---------------------------------------|---|-------------------------------------|
| ANTHONY CORDELL WILLIAMS, | § | |
| TDCJ-CID No. 585666 | § | |
| <i>Petitioner,</i> | § | |
| | § | |
| vs. | § | CIVIL ACTION H-06-3490 ¹ |
| | § | |
| NATHANIEL QUARTERMAN, DIRECTOR, | § | |
| TEXAS DEPARTMENT OF CRIMINAL JUSTICE, | § | |
| CORRECTIONAL INSTITUTIONS DIVISION, | § | |
| <i>Respondent.</i> | § | |

MEMORANDUM AND RECOMMENDATION

Petitioner Anthony Cordell Williams, an inmate of the Texas Department of Criminal Justice, has filed a federal petition for a writ of habeas corpus under 28 U.S.C. § 2254, which has been referred to this magistrate judge for report and recommendation. (Dkt. 7). The respondent has filed a motion for summary judgment (Dkt. 14). The court recommends that Williams' application be dismissed as time barred pursuant to 28 U.S.C. § 2244(d)(1)(A).

Williams is in the director's custody pursuant to a judgment and sentence from the 263rd Judicial District Court, Harris County, Texas for aggravated assault of a peace officer. Williams pled not guilty, but on February 22, 1991 a jury found him guilty. On February 26, 1991, Williams was sentenced him to twenty years imprisonment. Williams appealed, but upon rehearing the Fourteenth District Court of Appeals affirmed the judgment and sentence

¹ Williams has two habeas petitions contemporaneously pending before this court. Civil Action No. 06-3308 relates to his conviction for possession of cocaine, while this petition relates to the aggravated assault of a peace officer. Williams raises the same arguments in both petitions.

in an unpublished opinion on April 2, 1992.² Williams was paroled on February 24, 2003 and remains on release to date. On March 7, 2005, Williams filed a state habeas application which was denied. October 11, 2007, Williams filed this federal application for writ of habeas corpus on the same grounds as his state petition.

Williams' federal application is governed by the amendments to the federal habeas corpus statutes contained in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2244. The AEDPA provides a one year limitation period for habeas petitions, running from the latest of several start dates, including "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). Williams' conviction was affirmed by the Fourteenth Court of Appeals on April 2, 1992. Because Williams did not seek a petition for discretionary review, his conviction became final thirty days later on May 2, 1992. Prisoners whose convictions became final prior to April 24, 1996, the effective date of the AEDPA, had one year after that date, or until April 24, 1997, in which to file for § 2254 relief. *Grooms v. Johnson*, 208 F.3d 488, 489 (5th Cir. 1999).

Williams' limitation period has expired. Under § 2244(d)(2), a properly filed petition for state writ of habeas corpus will statutorily toll the limitations period. Williams did not file a state habeas application relating to his conviction until March 7, 2005, more than seven years after the expiration of his federal deadline. Therefore, his state application did not toll

² In the petition, Williams states that he filed for discretionary review, but the state court records do not reflect that such a petition was ever filed.

his limitations period. The petition also does not present any grounds for equitable tolling of his limitations period.

Williams has not alleged and demonstrated exceptional circumstances that prevented him from filing a timely petition to warrant equitable tolling of the limitations period. *See Felder v. Johnson*, 204 F.3d 168, 171-72 (5th Cir. 2000). Equitable tolling of the statute of limitations is permitted only if rare and exceptional circumstances beyond a prisoner's control make it impossible to file a petition on time. *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998). Mere ignorance of the law or lack of knowledge of filing rules or deadlines does not justify equitable tolling. *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999).

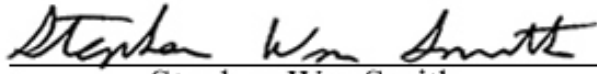
Williams claims that his conviction is void because the ruling in *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991) was not retroactively applied to his case. This claim, however, does not present a constitutional right recognized by the Supreme Court within the last year, which could be retroactive on collateral review. Furthermore, the record does not reflect that William was unable to have exercised reasonable diligence or that any unconstitutional “state action” impeded Williams from filing for federal habeas relief prior to the end of the limitations period. Therefore, the court recommends that this application be denied with prejudice.

The court further finds that Williams has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court

recommends that a certificate of appealability not issue.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on April 30, 2007.



Stephen Wm Smith
United States Magistrate Judge